decision, a result, however, which almost inevitably follows every attempt to guard against unwise legislation by restrictions which must be interpreted and enforced by the courts.

In addition to the questions above discussed numerous cases have arisen under particular clauses of these constitutional enactments, but the limits of this note forbid more than the following reference to the cases:

Acts conferring corporate powers: *Read* v. *Plattsmouth*, 107 U. S. 568; *School District* v. *Ins. Co.*, 103 Id. 707; *Clegg* v. *School District*, 8 Neb. 178; *Dundy* v. *Richardson Co.*, Id. 508; *State* v. *Powers*, 38 Ohio St. 54; *State* v. *Mitchell*, 31 Id. 592; *State* v. *Hoffman*, 35 Id. 435; *State* v. *Squires*, 26 Iowa 346.

Regulating the internal affairs of towns or counties: *Van Riper* v. *Parsons*, 40 N. J. L. 1; *Freeholders of Passaic* v. *Stevenson*, 46 Id. 173.

Regulating municipal business: *Williams* v. *Biddleman*, 7 Nev. 68; *Young* v. *Hall*, 9 Id. 212; *McConihe* v. *State*, 17 Fla. 338; *State* v. *Padgett*, 19 Id. 518; *Comrs.* v. *Shields*, 62 Mo. 247.

Regulating affairs of townships: *Montgomery* v. *Com.*, 91 Penn. St. 125.

Regulating practice of courts of justice: *Henry Sticknoth's Estate*, 7 Nev. 223; *State* v. *Kring*, 74 Mo. 612.

Relating to the assessment and collection of taxes: *State* v. *Cal. M. Co.*, 15 Nev. 234; *State* v. *Con. & M. Co.*, 16 Id. 432; *Manning* v. *Klippel*, 9 Or. 367; *Holst* v. *Roe*, 39 Ohio St. 340.

Releasing persons from debts or obligations to state: *Montague* v. *State*, 54 Md. 481.

Providing for the management of common schools: *Earle* v. *Bd. of Ed.*, 55 Cal. 489; *Speight* v. *People*, 87 Ill. 595.

FRANK P. PRICHARD.

Superior Court of Kentucky.

PULLMAN PALACE CAR CO. *v.* GAYLORD.

A sleeping car company does not incur towards a passenger the stringent liability of an innkeeper, but impliedly undertakes to keep a reasonable watch over the passenger and his property. The faithful performance of this undertaking is the limit of its duty, and it is, therefore, not enough for a passenger to show a loss—he must also show some negligence on the part of the company or its employees.

APPEAL from Jefferson Court of Common Pleas.

Sterling B. Toney, for appellant.

Temple Bodley, for appellee.

The opinion of the court was delivered by

RICHARDS, J.—T. G. Gaylord sued the Pullman Palace Car Company to recover $300, the value of a diamond scarf-pin stolen from him while a passenger on one of the defendant's cars. A demurrer having been overruled to the petition, and the company

declining to plead further, a judgment was rendered for the plaintiff, proof as to the value of the pin having been waived.

The material facts admitted by the demurrer are that plaintiff, being the holder of a first-class ticket from Chicago to Louisville by way of the Louisville, New Albany & Chicago Railroad, purchased from the defendant, for the price of $2, a ticket entitling him to a berth on its car attached to the train on said road; that he entered said car at night, and was assigned a berth by the officer in charge; he disrobed himself, placing the scarf, which was worn by him and contained said pin, in the receptacle at or near the end of the berth within the walls of the sub-apartment called the section; that said receptacle, at or near the head of plaintiff's bed, had been prepared by the company for such articles; that thereafter, while he was asleep, said pin, without the fault of the plaintiff, was stolen from said receptacle, and has not been returned, though demanded of the defendant; and that said pin was such as persons in plaintiff's social and pecuniary condition in life ordinarily wear as a proper article of dress. There was no allegation that the loss was occasioned by the negligence of the defendant, or that its agents in charge of the car had not exercised reasonable care in watching over the sleeper.

It is conceded by the learned counsel for the appellee that as to this loss the defendant can neither be regarded as a common carrier nor an innkeeper; but he insists that the reasons which underlie the principles of the common law making the carrier or innkeeper, liable to the owner for the loss of goods, extend to this case, and that, therefore, the same rules should be applied in determining the defendant's responsibilities.

The common law made the carrier of goods, received for transportation, an insurer for their safe delivery, and he could only excuse himself for the loss by showing that it had been occasioned by the act of God or of the king's enemies. It imposed on innkeepers "a responsibility nearly commensurable with that of common carriers;" they were made *prima facie* liable for all articles "confided expressly or impliedly to their custody and care," but the grounds upon which they might defend were not so limited as in the case of the carrier: *Weisenger* v. *Taylor*, 1 Bush 276.

But in dealing with carriers of passengers, these rigid rules have never been extended beyond the baggage expressly intrusted to their custody. The rights, duties and liabilities of the passenger

and carrier by land were well settled before the introduction of sleeping cars. The carrier became the insurer of all baggage received by him, and was bound to deliver it safely at its destination, unless prevented by the act of God or the public enemy. But as to such articles as the passenger retained about his person or in his possession, if they were lost or injured, the carrier was not responsible therefor, unless occasioned by his negligence; and this rule was even extended to such paraphernalia as the passenger could not reasonably be expected to part with during his journey. Whether the passenger remained awake or slept in his seat, the carrier was under no obligation to guard him against theft from his fellow travellers.

But as to carriers of passengers by water, where they had paid for the privilege of occupying state-rooms, in which they were invited to sleep, the duties and liabilities of the respective parties do not seem to have been so definitely determined. In some courts it has been held that a steamboat company was liable to the occupant of a state-room, in the absence of negligence or fraud on his part, for the value of articles properly worn about his person, if stolen while he was asleep at night. But the opinion expressed by Chief Justice GRAY, in *Clark* v. *Burns*, 118 Mass. 275, seems to accord with the weight of authority. The court there say: "The defendants, as owners of steamboats carrying passengers and goods for hire, were not innkeepers. They would be subject to the liability of common carriers for the baggage of passengers in their custody, and might, perhaps, be so liable for the watch of a passenger locked up in his trunk with other baggage. But a watch, worn by a passenger on his person by day and kept by him within reach for use at night, whether retained upon his person or placed under his pillow, or in a pocket of his clothing hanging near him, is not so intrusted to their custody and control as to make them liable for it as common carriers." The distinguished jurist cites a number of authorities in support of this position, among them, *Steamboat Crystal Palace* v. *Vanderpool*, 16 B. M. 402. In that case, Vanderpool, having been robbed of a watch, diamond pin and a sum of money, sued the owners of the boat for their value. On the night of the larceny he communicated to a servant of the boat the fact that the lock on the door of his state-room was out of order and could not be fastened. The servant instructed him to place a chair and his baggage against the door, which he

did. The articles in question were worn and carried on the person of the plaintiff, and on retiring they were placed on a chair and a shirt thrown over them. On the following morning it was discovered that they had been stolen during the night. The court says: "Steamboats are, in some respects, analogous to inns, and it would greatly promote the ease, comfort and safety of the travelling community if their owners were held responsible to the same extent that innkeepers are; but, so far as we know, they have never been held accountable upon the principles applicable to innkeepers, and we suppose that thousands of instances have occurred on steamboats, of depredations like the one perpetrated on the plaintiff, and yet we have heard of no case in which the principles of law governing innkeepers have been extended to steamboat owners. * * * Steamboat owners are regarded as common carriers, and are subject to the well-established principles governing their responsibilities; and we are not aware of any principles by which common carriers can be held responsible for the wearing apparel of the passenger or his money which he carries upon his person, and which is under his own immediate care and control. When such things are made baggage, and delivered to the owners or their agents, the rule is different, and their responsibility is regulated by the established rules in reference to the baggage of passengers."

It would be difficult to give any valid reason why a sleeping-car company should be held to any more rigid liability in such cases than a steamboat company. It could no more be said that a sleeping car was an "inn on wheels" than that a steamboat was an inn on water. They both provide sleeping apartments for passengers, who pay for the privilege and are expected to occupy them. Sleep is as essential to the health and comfort of the traveller in the one case as in the other. The servants of the steamboat company certainly have the implied custody of the passenger's wearing apparel to as great an extent as the servants of the sleeping-car company. The resemblance of a steamboat to an inn is even greater than that of the sleeping-car, since it is customary for the former to provide meals for its passengers. If, then, the rigid liability of innkeepers is not to be extended to the owners of steamboats, common justice demands that it be not applied to the owners of sleeping cars. And we find this rule has been followed so far as the responsibilities of the latter have been the subject of judicial inquiry.

While these adjudications are not placed upon the same ground, their conclusions are substantially the same. We cannot concur in some of the reasons assigned in the various opinions, but we think their decisions are, in the main correct.

In *Plum* v. *Pullman Sleeping Car Co.*, 3 Cent. Law Journal 592, the United States Circuit Court in Tennessee, Judge BROWN presiding, held that the company was not liable, either as an innkeeper or a common carrier, for money stolen from a passenger's pocket; but at the same time the court discussed what was considered the true relations between the company and its passengers, and held that the former was bound to keep a watch during the night to exclude unauthorized persons from the car, and "must take reasonable care of their guests and property, especially while said guests are asleep."

In *Palmeter* v. *Wagner*, discussed in 11 Albany Law Journal 149, the Marine Court of New York held that sleeping-car companies were not insurers, innkeepers nor transporters, nevertheless they must, by a reasonable watch, protect a passenger and the property about his person during sleep.

In *Welsh* v. *Pullman Palace Car Co.*, 16 Abb. Pr. (N. S.) 252, it was held that the defendant was not responsible for an overcoat, which the plaintiff, upon going to sleep, had hung in the berth above him. The court says: "The traveller voluntarily, and not of necessity, availed himself of what was placed before him for his comfort, and he cannot cast the burden of care and diligence upon the defendant, neither is it right or just that the law should do so." We think that the learned court has gone too far in this case in exonerating such companies. They assume that "the most discreet and vigilant officers of a car cannot prevent depredations," and conclude that no duty attaches to the company in respect to the articles taken into the car by the passenger. They place the passenger upon the sleeping-car upon precisely the same footing as a passenger upon any other coach attached to the train. In this we think the court has gone too far; nor did the facts of that case require this extreme view.

The Supreme Court of Illinois, in *Pullman Palace Car Co.* v. *Smith*, 73 Ill. 360, has considered this question. There Smith sued the company to recover $1180. The court instructed the jury that if they believed from the evidence that the plaintiff had been robbed while travelling on the defendant's car they should

find for him the amount lost, provided it did not exceed what would be a reasonable sum for him to carry on the journey he was taking. The verdict was for $277 in plaintiff's favor. The court say: "The instruction which the court gave to the jury made the company responsible as insurer for the safety of the money, imposing upon it the severe liability of an innkeeper or common carrier. * * * It would be unreasonable to make the company responsible for the loss of money which was never intrusted to its custody at all, of which it had no information, and which the owner had concealed upon his person. The exposure to the hazard of liability for losses through collusion, for pretended claims of loss where there would be no means of disproof, would make the responsibility claimed a fearful one. Appellee assumed the exclusive custody of his money, adopted his own measures for its safe-keeping by himself, and we think his must be the responsibility of its loss." Here again the court, finding that the defendant did not come within the ancient definition of a common carrier of goods, nor the Blackstonian definition of an innkeeper, reversed the judgment against the company, and in doing so used language that would indicate the company was not to be held liable for such losses under any circumstances. As to whether the defendant, although not in fact an innkeeper or common carrier of goods, undertook the performance of any duty in assuming its peculiar relations with the plaintiff, which would require it to watch over the plaintiff and his goods, was not discussed.

But it seems to us that the Supreme Court of Indiana, in the case of *Woodruff, S. & P. C. Co.* v. *Diehl*, 84 Ind. 474, has more accurately defined the duties and liabilities of the parties under such circumstances. There the plaintiff had lost his pocket-money, watch, chain and locket. The petition alleged that "the appellant and its servants so carelessly and negligently conducted and behaved themselves in not keeping proper care and watch, and in not furnishing sleeping places which could be securely fastened, and in being otherwise careless and negligent, that by and through the said carelessness, negligence and default of the appellant and its servants in that behalf," the said property was lost. The special finding of the lower court was, "that the plaintiff's loss was occasioned by the negligence of the defendant in failing to keep a sufficient watch during the night, and to take reasonable care to prevent thefts, and that the plaintiff was without fault. Upon this

ground a judgment in the plaintiff's favor for the value of the articles was affirmed.

While, therefore, the stringent liability of an innkeeper, which the distinguished Chief Justice COLERIDGE has said does not "stand on mere reason, but on custom, growing out of a state of society no longer existing," is not to be applied to the owners of sleeping cars, it does not follow that they assume no duties or liabilities. These cars are in themselves an invitation to the travelling public to enter and protect themselves against the weariness of a long journey by disrobing and sleeping.

The passenger in buying and the company in selling the ticket contemplate that this privilege will be improved. The company accepting compensation under these circumstances impliedly undertakes to keep a reasonable watch over the passenger and his property. The faithful performance of this undertaking is the limit of its duty in this respect. Its breach must be the foundation of every action seeking to charge the company with the loss of articles the passenger has taken with him upon the car.

In the case at bar the defendant was held liable without regard to the faithfulness of its servants. If they exercised proper care by keeping a reasonable watch over the plaintiff's property, there was no breach of any undertaking on the part of the company, and hence no liability.

For this reason the judgment is reversed, and the cause remanded with directions to sustain the demurrer.

Circuit Court, Eastern District of Pennsylvania.

HATCH v. ADAMS.

A purchaser of patented articles from a territorial assignee of the patent, does not acquire the right to sell the articles in the course of trade outside the territory granted to his vendor.

FINAL HEARING.

This was a bill filed by O. L. Hatch, the owner of a patent for improvement in spring bed bottoms, and Elmer H. Grey & Co., to whom he had given an exclusive license in certain territory, against W. J. Adams, a dealer in bed bottoms, who was selling such patented improvement within said territory. The case was argued